

The Hon. David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

JOAO RICARDO DEBORBA,

Defendant.

CASE NO. CR22-5139-DGE

UNITED STATES' PROPOSED FORFEITURE JURY INSTRUCTIONS

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(Cited)

DATED this 2nd day of January, 2024.

Respectfully submitted,

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1 PLAINTIFF'S REQUESTED FORFEITURE INSTRUCTION NO. 1

2 INSTRUCTION NO. ____

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4 Jurors: Now that you have found that Defendant Joao Ricardo DeBorba
 5 committed the offense of *Unlawful Possession of Firearms and Ammunition*, as charged
 6 in Count 1 of the Indictment, and *Unlawful Possession of a Firearm Silencer*, as charged
 7 in Count 7 of the Indictment, you have one more task to perform before you are
 8 discharged. Under federal law, any person who is convicted of *Unlawful Possession of*
 9 *Firearms and Ammunition* shall forfeit, to the United States, any firearms and
 10 ammunition that were involved in the offense. Similarly, under federal law, any person
 11 who is convicted of *Unlawful Possession of a Firearm Silencer* shall forfeit, to the United
 12 States, any firearm silencer that was involved in the offense.

13 The United States has alleged that a firearm and ammunition were involved in
 14 Defendant's commission of *Unlawful Possession of Firearms and Ammunition* and are,
 15 therefore, subject to forfeiture. Specifically, the United States has alleged that the Ruger
 16 model LCP 9mm handgun and numerous rounds of ammunition, including Aguila .300
 17 ACP blackout and Blazer Brass .380 auto, which were seized from Defendant Joao
 18 Ricardo DeBorba's residence on or about May 6, 2022, are subject to forfeiture.

19 The United States has alleged that the firearm silencer, which was seized from
 20 Defendant Joao Ricardo DeBorba's residence on or about May 6, 2022, was involved in
 21 Defendant's commission of *Unlawful Possession of a Firearm Silencer* and is, therefore,
 22 subject to forfeiture.

23 You must now determine whether this property is, in fact, forfeitable and return a
 24 special verdict reflecting your findings.

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2 18 U.S.C. § 924(d)(1) (forfeiting firearms and ammunition used or involved in certain
3 firearm and ammunition possession offenses, including Unlawful Possession of a
4 Firearm, in violation of 18 U.S.C. § 922(g)).
5 28 U.S.C. § 2461(c) (authorizing forfeiture as part of criminal sentence upon conviction
6 of an offense for which civil forfeiture of property is authorized).
7 Fed. R. Crim. P. 32.2(b)(1)(A) (directing the court or jury to determine what property is
8 subject to forfeiture under the applicable statutes).
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1 PLAINTIFF'S REQUESTED FORFEITURE INSTRUCTION NO. 2
2 INSTRUCTION NO. ____
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4 The burden of proof is different at the forfeiture phase of trial. Whereas the
5 United States had the burden of proving the Defendant's guilt "beyond a reasonable
6 doubt," the United States need only prove the identified property is forfeitable "by a
7 preponderance of the evidence." This is a much lower burden.

8 When a party has the burden of proving any claim by a preponderance of the
9 evidence, it means you must be persuaded by the evidence that the claim is more
10 probably true than not.

11 You should base your decision on all of the evidence, regardless of which party
12 presented it.
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22 Ninth Circuit Model Civil Jury Instruction – 1.6 (2017 Edition, last updated May 2023);
23 *United States v. Garcia-Guizar*, 160 F. 3d 511, 523 (9th Cir. 1998) ("criminal forfeiture
need only be proved by a preponderance of the evidence") (citing *United States v.*
24 *Hernandez-Escarsega*, 886 F.2d 1560, 1576-77 (9th Cir. 1989)); *United States v.*
25 *Shryock*, 342 F.3d 948, 991 (9th Cir. 2003) (the Supreme Court's holding in *Apprendi*
26 "does not disturb the rule that statutorily-prescribed forfeiture is constitutional when
supported by the preponderance of the evidence").

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 3
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4 INSTRUCTION NO. ____
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20 While deliberating on forfeiture, you may consider any evidence, including
21 testimony, offered by the parties at any time during the trial.
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Fed. R. Crim. P. 32.2(b)(1)(B) (forfeiture determination “may be based on evidence already in the record . . . and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable.”); *United States v. Newman*, 659 F.3d 1235, 1244-45 (9th Cir. 2011) (recognizing Rule 32.2(b)(1)(B) allows the court, when making a forfeiture determination, to rely on evidence already in the record, including any admissions in written plea agreement), *abrogated on other grounds by Honeycutt v. United States*, 137 S. Ct. 1626, 1632 (2017); *United States v. Bornfield*, 145 F.3d 1123, 1134-36 (10th Cir. 1998) (implicitly approving instruction to the jury that it could “consider any evidence offered by the parties before [its] previous deliberations” on the criminal charges when deciding forfeiture).

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 4
2 INSTRUCTION NO. ____
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4 When considering the evidence for forfeiture, the instructions you previously
5 received regarding what is evidence, direct and circumstantial evidence, the credibility of
6 witnesses, and reaching a unanimous verdict continue to apply.
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25 Ninth Circuit Model Criminal Jury Instructions - 1.3, 1.4, 1.5, 1.7, 3.7 & 6.19 (2022
26 Edition, last updated May 2023).
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 5
2 INSTRUCTION NO. ____
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4 You have found that Defendant Joao Ricardo DeBorba committed the offense of
5 *Unlawful Possession of Firearms and Ammunition*, as charged in Count 1 of the
6 Indictment. When deliberating on forfeiture, you are bound by this previous finding and
7 must not reconsider or revise it.

8 You have found that Defendant Joao Ricardo DeBorba committed the offense of
9 *Unlawful Possession of Firearm Silencer*, as charged in Count 7 of the Indictment. When
10 deliberating on forfeiture, you are bound by this previous finding and must not reconsider
11 or revise it.
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23 *United States v. Bornfield*, 145 F.3d 1123, 1138 n.12 (10th Cir. 1998) (because forfeiture
24 is imposed following conviction, as part of the sentence, it “does not affect … [a
Defendant’s] substantive conviction”); *United States v. Cauble*, 706 F.2d 1322, 1348 (5th
25 Cir. 1983) (bifurcating forfeiture in a second phase of a trial “prevents the potential
26 penalty of forfeiture from influencing the jurors’ deliberations about guilt or innocence”).
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 6
2 INSTRUCTION NO. ____
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4 When deliberating on forfeiture, you should not consider what might happen to
5 this firearm, ammunition, and firearm silencer if forfeited. The ultimate disposition of
6 forfeited property is a matter for the Court to decide.

7 Nor should you consider, when deliberating, whether anyone other than the
8 Defendant Joao Ricardo DeBorba may have an interest in this firearm, ammunition, and
9 silencer. Any third-party interests will be addressed by the Court in a separate
10 proceeding.

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25 Fed. R. Crim. P. 32.2(c) (the court enters a final order of forfeiture after any third-party
26 claims are adjudicated in post-sentencing ancillary proceedings).
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 7
2 INSTRUCTION NO. ____
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4 You have found the Defendant Joao Ricardo DeBorba committed the offense of
5 *Unlawful Possession of Firearms and Ammunition*, as charged in Count 1 of Indictment.

6 Pursuant to Section 924(d)(1) of Title 18 of the United States Code, and Title 28,
7 United States Code, Section 2461(c), any firearms and ammunition involved in the
8 offense of *Unlawful Possession of Firearms and Ammunition* are subject to forfeiture to
9 the United States.

10 A firearm and ammunition are forfeitable as "involved in" a crime where they
11 served as the foundation of the defendant's criminality and conviction of that offense.

12 To reach a verdict on forfeiture with respect to Count 1, you must determine
13 whether the Ruger model LCP 9mm handgun and the rounds of ammunition, including
14 Aguila .300 AAC blackout and Blazer Brass .380 auto, were "involved in" Defendant
15 Joao Ricardo DeBorba's commission of the offense of *Unlawful Possession of Firearms*
16 and *Ammunition*, as charged in Count 1.

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19 18 U.S.C. § 924(d)(1) (forfeiting firearms and ammunition used or involved in certain
20 firearm and ammunition offenses).

21 28 U.S.C. § 2461(c) (authorizing forfeiture as part of criminal sentence upon conviction
of an offense for which civil forfeiture of property is authorized).

22 "[T]he seized firearms . . . were 'involved in' the offense to which [the defendant] pled
23 guilty because the firearms served as the foundation of his criminality and conviction.
Indeed, without the firearms, there would have been no crime. Accordingly, the firearms
24 were related closely to and were a necessary accompaniment to the crime charged"
25 *United States v. Cheeseman*, 600 F.3d 270, 278 (3d Cir. 2010) (brackets and ellipses
added); see also *United States v. Soto*, 915 F.3d 675, 678-79 (discussing *Cheeseman*).
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 8
2 INSTRUCTION NO. ____
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4 You have found the Defendant Joao Ricardo DeBorba committed the offense of
5 *Unlawful Possession of a Firearm Silencer*, as charged in Count 7 of Indictment.

6 Pursuant to Section 5872 of Title 26 of the United States Code, and Title 28,
7 United States Code, Section 2461(c), any firearm silencer involved in the offense of
8 *Unlawful Possession of a Firearm Silencer* is subject to forfeiture to the United States.

9 A firearm silencer is forfeitable as “involved in” a crime where is served as the
10 foundation of the defendant’s criminality and conviction of that offense.

11 To reach a verdict on forfeiture with respect to Count 7, you must determine
12 whether firearm silencer was “involved in” Defendant Joao Ricardo DeBorba’s
13 commission of the offense of *Unlawful Possession of a Firearm Silencer*, as charged in
14 Count 7.

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19 26 U.S.C. § 5872 (providing for forfeiture of firearm silencers).

20 28 U.S.C. § 2461(c) (authorizing forfeiture as part of criminal sentence upon conviction
21 of an offense for which civil forfeiture of property is authorized).

22 “[T]he seized firearms . . . were ‘involved in’ the offense to which [the defendant] pled
23 guilty because the firearms served as the foundation of his criminality and conviction.
24 Indeed, without the firearms, there would have been no crime. Accordingly, the firearms
25 were related closely to and were a necessary accompaniment to the crime charged”
United States v. Cheeseman, 600 F.3d 270, 278 (3d Cir. 2010) (brackets and ellipses
added); see also *United States v. Soto*, 915 F.3d 675, 678-79 (discussing *Cheeseman*).
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 9
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4 INSTRUCTION NO. ____
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7 A Special Verdict Form for Forfeiture has been prepared for you to record your
8 forfeiture verdict. You may record your verdict by putting an "X" or check mark in the
9 space provided under the words "YES" or "NO." The foreperson must then sign and date
10 the form.
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25 Fed. R. Crim. P. 32.2(b)(5)(B) (when the jury determines forfeiture, the government must
26 submit a Special Verdict Form for that purpose).
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